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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 Philip Wong, Frederic Chaussy, and Leslie
14 Marie Shearn, individually, on behalf of all
others similarly situated, and on behalf of
15 the general public,

16 Plaintiffs,

17 v.

18 HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
19 through 50, inclusive,

20 Defendants.
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Case No. C 07 2446 MMC [ECF]

**DEFENDANTS HSBC MORTGAGE
CORPORATION (USA) AND HSBC BANK
USA, N.A.'S MOTION FOR
ADMINISTRATIVE RELIEF TO FILE
UNDER SEAL EXHIBITS IN SUPPORT
OF DEFENDANTS' MOTION FOR RULE
11(C) SANCTIONS**

Date: May 5, 2008
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

NOTICE OF MOTION AND MOTION

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants HSBC MORTGAGE CORPORATION (USA) and HSBC BANK USA, N.A. will and do hereby request that this Court grant its Motion for Administrative Relief to File Under Seal Exhibits in support of Defendants' Motion for Rule 11(c) Sanctions.

This Motion is made pursuant to Local Rules 79-5 and 7-11 of the Local Rules for the United States District Court for the Northern District of California and seeks an order allowing the following documents to be filed under seal:

a. Exhibits A through G to Jeanette Jennings' Declaration in support of Defendants' Motion for Rule 11(c) Sanctions, which are marked "Confidential" by Defendants in accordance with the Stipulated Protective Order entered into by the parties;

b. Exhibit A to Henry Yip's Declaration in support of Defendants' Motion for Rule 11(c) Sanctions, which is marked as "Confidential" by Defendants in accordance with the Stipulated Protective Order entered into by the parties;

c. Exhibit A to Ron Lord's Declaration in support of Defendants' Motion for Rule 11(c) Sanctions, which Plaintiffs will likely argue are protected by the attorney-client privilege; and

d. Exhibits F and G to Michelle R. Barrett's Declaration in support of Defendants' Motion for Rule 11(c) Sanctions, which contain confidential information related to employees and customers and which should be marked "Confidential" pursuant to the Stipulated Protective Order entered into by the parties.

This Motion is based upon this Notice of Motion and Motion, the Declaration of Michelle R. Barrett in support of this Administrative Motion, the [Proposed] Order, all the files and records in this matter, and on such argument as may be allowed by the Court and presented.

1 Dated: April 29, 2008

Respectfully submitted,

2 /s/ Michelle R. Barrett

3 MICHELLE R. BARRETT

4 GEORGE J. TICHY II

KIMBERLY L. OWENS

5 JUSTIN T. CURLEY

LITTLER MENDELSON

6 A Professional Corporation

Attorneys for Defendants

7 HSBC MORTGAGE CORPORATION (USA)

8 and HSBC BANK USA, N.A.

MOTION FOR ADMINISTRATIVE RELIEF TO FILE UNDER SEAL

I. INTRODUCTION

Defendants HSBC Mortgage Corporation (USA) and HSBC Bank USA, N.A. (hereinafter "Defendants") hereby submit this Motion for Administrative Relief, pursuant to Local Rules 79-5 and 7-11 of the Local Rules for the United States District Court for the Northern District of California, for an order allowing the filing of the following documents to be filed under seal: (1) Exhibits A through G to Jeanette Jennings' Declaration in support of Defendants' Motion for Rule 11(c) Sanctions; (2) Exhibit A to Henry Yip's Declaration in support of Defendants' Motion for Rule 11(c) Sanctions; (3) Exhibit A to Ron Lord's Declaration in support of the same; and (4) Exhibits F and G to Michelle R. Barrett's Declaration in support of the same. In particular, Defendants' request to file Exhibit A to the Lord Declaration is made in anticipation of the fact that Plaintiffs may argue that the documents contained in Exhibit A are protected by the attorney-client privilege.

II. ARGUMENT

Local Rule 79-5 of the Local Rules for the United States District Court for the Northern District of California states that the Court may issue an order to file a document, or portions thereof, under seal if the requesting party can demonstrate: (1) the document, or portions thereof, is "privileged or protectable as a trade secret or otherwise entitled to protection under the law" and (2) the request is "narrowly tailored." Here, there is good cause to file under seal exhibits in support of Defendants' Motion for Rule 11(c) Sanctions because they contain information that is confidential, private, proprietary and/or arguably privileged.

Exhibits A through G to the Declaration of Jeanette Jennings in support of Defendants Motion for Rule 11(c) Sanctions are documents designated by Defendants as "confidential" pursuant to the parties' Stipulated Protective Order. (*See* Declaration of Michelle R. Barrett ["Barrett Decl."], Exh. 1). Exhibits A through G to the Jennings' Declaration are true and correct copies of the following internal policies marked as "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER":

- Exhibit A: HSBC North America – Workplace Solicitation and Distribution policy;

- Exhibit B: HSBC North America – Electronic Monitoring policy;¹
- Exhibit C: HSBC North America – Business Principles and Code of Ethics policies;
- Exhibit D: HSBC North America – Confidentiality Policy;
- Exhibit E: HSBC North America Information Protection Standard (IPS) Information Security Risk Policy;
- Exhibit F: Employee Privacy Policy, and
- Exhibit G: Personal Conduct Policy.

(Barrett Decl., Exh. 2).

Exhibit A to the Declaration of Henry Yip in support of Defendants' Motion for Rule 11(c) Sanctions contains documents designated by Defendants as "confidential" pursuant to the parties' Stipulated Protective Order. Exhibit A to the Declaration of Henry Yip is a true and correct copy of HSBC North America Holdings, Inc. E-mail Policy marked as "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER." (Barrett Decl., Exh. 3).

Exhibit A to the Declaration of Ron Lord in support of Defendants' Motion for Rule 11(c) Sanctions contains a string of e-mail communications obtained from Defendants' e-mail system. (Barrett Decl., Exh. 4). The parties have a dispute as to whether or not these e-mail communications are subject to the attorney-client privilege. (Barrett Decl. ¶ 4, Exhs. 5 and 6). As explained thoroughly in Defendants' Motion for Rule 11(c) Sanctions, Plaintiff Wong (and any other employee using Defendants' e-mail system to communicate with an attorney) has waived the attorney-client privilege with respect to these communications. As such, the e-mail communications attached as Exhibit A to the Ron Lord Declaration are *not* subject to the attorney-client privilege. In recognition of defense counsel's ethical obligations and in an abundance of caution, Defendants move the Court to file this document under seal, until such time as the Court determines that the communications are not protected by the attorney-client or work product privileges.

Exhibits F and G to Michelle Barrett's Declaration in support of Defendants' Motion for

¹ Exhibit B to Jennings' Declaration also includes Plaintiff Wong's acknowledgment of receipt of HSBC North America Electronic Monitoring policy (MORT 000117), which is not marked Confidential. Therefore, Defendants are not requesting that MORT 000117 be filed under seal.

1 Rule 11(c) Sanctions contain confidential and private financial information about putative class
2 members, including sales data from which one can calculate class members' compensation, as well
3 as financial information about customers. (Barrett Decl. Exhs. 7 and 8). There is a Constitutional
4 right to privacy with respect to one's personal financial information. *See, e.g., Tien v. Superior*
5 *Court*, 139 Cal. App. 4th 528, 539 (2006) ("The right of privacy is an 'inalienable right' secured by
6 article I, section 1 of the California Constitution. It protects against the unwarranted, compelled
7 disclosure of various private or sensitive information regarding one's personal life, including his or
8 her financial affairs...."). The public disclosure of the confidential information contained in
9 Exhibits F and G to Michelle Barrett's Declaration would not only cause constitutionally protected
10 private information to be disclosed in public documents, but such disclosure violates several of
11 Defendants' policies regarding the protection of confidential, proprietary, financial and/or sales data.
12 As financial institutions, Defendants have a very strong and legitimate interest in keeping this
13 information confidential and from public disclosure.

14 This request is narrowly tailored because Defendants are only requesting to seal documents
15 which discuss private, confidential, or proprietary information and document which Plaintiffs will
16 undoubtedly claim are privileged.

1 **III. CONCLUSION**

2 For the foregoing reasons, Defendants respectfully request that the Court grant its Motion for
3 Administrative Relief to File Under Seal Exhibits A through G to Jeanette Jennings' Declaration in
4 support of Defendants' Motion for Rule 11(c) Sanctions, Exhibit A to the Declaration of Henry Yip
5 in support of the same, Exhibit A to the Declaration of Ron Lord in support of the same, and
6 Exhibits F and G to the Declaration of Michelle R. Barrett in support of the same.

7
8 Dated: April 29, 2008

Respectfully submitted,

9
10 /s/ Michelle R. Barrett
MICHELLE R. BARRETT
11 GEORGE J. TICHY II
KIMBERLY L. OWENS
12 JUSTIN T. CURLEY
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